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SENATE BILL 807

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Joseph J. Carraro

AN ACT

RELATING TO THE CONSERVATION OF RESOURCES; AMENDING THE PUBLIC FACILITY ENERGY EFFICIENCY AND WATER CONSERVATION ACT TO ALLOW FOR ADDITIONAL SURETIES TO GUARANTEE PERFORMANCE; EXTENDING GUARANTEED UTILITY SAVINGS CONTRACTS FROM TEN TO FOURTEEN YEARS; AMENDING THE PROCUREMENT CODE TO CLARIFY THAT CERTAIN CONTRACTS MAY PROVIDE FOR BOTH DESIGN AND INSTALLATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-23-3 NMSA 1978 (being Laws 1993, Chapter 231, Section 3, as amended) is amended to read:

"6-23-3. GUARANTEED UTILITY SAVINGS CONTRACTS AUTHORIZED--ENERGY OR WATER SAVINGS GUARANTEE REQUIRED.--

A. A governmental unit may enter into a guaranteed utility savings contract with a qualified provider to reduce energy, water or conservation-related operating costs if, after

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1 review of the utility efficiency proposal from the qualified
2 provider, the governmental unit finds that:

3 (1) the amount the governmental unit would
4 spend on the energy or water conservation measures recommended
5 in the proposal is not likely to exceed the amount of utility
6 cost savings and conservation-related cost savings over [~~ten~~]
7 fourteen years from the date of installation if the
8 recommendations in the proposal were followed; and

9 (2) the qualified provider can provide a
10 written guarantee that the utility cost savings and
11 conservation-related cost savings will meet or exceed the costs
12 of the conservation measures.

13 B. A guaranteed utility savings contract shall
14 include:

15 (1) a written guarantee from the qualified
16 provider that annual utility cost savings and conservation-
17 related cost savings shall meet or exceed the cost of the
18 conservation measures; and

19 (2) a requirement that the qualified provider
20 maintain a direct financial relationship with the governmental
21 unit, irrespective of the source of financing for the energy or
22 water conservation measures to be implemented.

23 C. A guaranteed utility savings contract may extend
24 beyond the fiscal year in which it becomes effective and may
25 provide for payments over a period of time not to exceed [~~ten~~]

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1 fourteen years; provided, however, only utility cost savings,
2 conservation-related cost savings and special funds authorized
3 pursuant to the Public Facility Energy Efficiency and Water
4 Conservation Act or other law shall be pledged for the
5 payments.

6 D. A governmental unit may enter into an
7 installment payment contract or lease-purchase agreement for
8 the purchase and installation of energy or water conservation
9 measures pursuant to a guaranteed utility savings contract, but
10 only in accordance with the provisions of the Public Facility
11 Energy Efficiency and Water Conservation Act.

12 E. A governmental unit may enter into a guaranteed
13 utility savings contract pursuant to Section 13-1-129 NMSA 1978
14 in accordance with the provisions of the Public Facility Energy
15 Efficiency and Water Conservation Act. "

16 Section 2. Section 6-23-4 NMSA 1978 (being Laws 1993,
17 Chapter 231, Section 4, as amended) is amended to read:

18 "6-23-4. GUARANTEED UTILITY SAVINGS CONTRACT-- PERFORMANCE
19 [~~BOND~~] GUARANTEE REQUIRED.--A governmental unit shall not enter
20 into a guaranteed utility savings contract unless a performance
21 [~~bond~~] guarantee that meets the requirements of this section is
22 delivered by the qualified provider to the governmental unit
23 and that [~~bond~~] guarantee becomes binding on the parties upon
24 the execution of the guaranteed utility savings contract. The
25 qualified provider shall provide a performance [~~bond~~] guarantee

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1 in the form of a performance bond, a cash bond, a letter of
2 credit issued by a bank with a Moody's or Standard and Poor's
3 rating of "A" or better or any other surety, including
4 insurance, satisfactory to the governmental unit and its
5 approving agency [~~executed by a surety company authorized to do~~
6 ~~business in this state and approved in federal circular 570~~
7 ~~published by the United States treasury department or by the~~
8 ~~state board of finance~~]. The [bond] guarantee for each year
9 shall be in an amount equal to the amount of the annual
10 guarantee given by the qualified provider in the guaranteed
11 utility savings contract."

12 Section 3. Section 6-23-6.1 NMSA 1978 (being Laws 1997,
13 Chapter 42, Section 7, as amended) is amended to read:

14 "6-23-6.1. REPORTING AND RETENTION OF UTILITY COST
15 SAVINGS FOR STATE AGENCIES. --

16 A. A state agency entering into a guaranteed
17 utility savings contract with a qualified provider shall, no
18 later than thirty days after the close of the fiscal year,
19 furnish the energy, minerals and natural resources department a
20 consumption and savings report, in a format established jointly
21 by that department and the department of finance and
22 administration, [which] that estimates any cost savings
23 resulting from the implementation of the guaranteed utility
24 savings contract during the fiscal year. The report shall
25 include:

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1 (1) the name or description of each facility
2 or major utility system covered by the report;

3 (2) utility account numbers;

4 (3) a record of monthly consumption of water
5 or energy by fuel type; and

6 (4) a record of monthly per-unit cost of water
7 or energy by fuel type.

8 B. If the consumption and savings report for a
9 state agency shows a utility cost savings or conservation-
10 related cost savings at the end of the fiscal year that
11 resulted from implementation of a guaranteed utility savings
12 contract and causes an unexpended and unencumbered balance in
13 the agency's utility line item, and if the utility cost savings
14 or conservation-related cost savings has not been pledged for
15 payments pursuant to the guaranteed utility savings contract,
16 the dollar amount of the utility cost savings or conservation-
17 related cost savings shall be carried over as a reserved
18 designated fund balance to the subsequent fiscal year.

19 C. Beginning the year after the energy or water
20 conservation measures are implemented, and until any
21 alternative financing for a guaranteed utility savings contract
22 is repaid, or for a period of no more than ~~[ten]~~ fourteen
23 years, whichever is less, all utility budgets and
24 appropriations for the state agency shall be based on:

25 (1) the energy or water consumption levels, or

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1 both, before the energy or water conservation measures were
2 implemented;

3 (2) the same allowance for escalation or
4 decrease of utility costs given state agencies that did not
5 participate in a guaranteed utility savings contract; and

6 (3) any adjustments for acquisitions,
7 expansions, sale or disposition of state agency facilities.

8 D. At the end of the repayment period for the
9 guaranteed utility savings contract, or [~~ten~~] fourteen years,
10 whichever is less, new budgets or appropriations for utilities
11 shall again be based upon actual utility consumption.

12 E. Upon carryover of the dollar amount of utility
13 cost savings or conservation-related cost savings as a reserved
14 designated fund balance to the subsequent fiscal year, state
15 agencies may submit a budget adjustment request to use those
16 funds for the following purposes:

17 (1) up to one hundred percent of the funds may
18 be used for additional energy or water conservation measures or
19 for payment of guaranteed utility savings contracts; and

20 (2) after encumbrances for additional energy
21 or water conservation measures or for payment of guaranteed
22 utility savings contracts have been made, up to fifty percent
23 of the remaining funds may be used for purposes consistent with
24 the duties and responsibilities assigned to the state agency,
25 while the remaining funds shall revert to the appropriate fund.

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1 F. For the purposes of this section, "state agency"
2 means an agency, institution or instrumentality of the state of
3 New Mexico. "State agency" does not include a municipality,
4 county or school district."

5 Section 4. Section 13-1-111 NMSA 1978 (being Laws 1984,
6 Chapter 65, Section 84, as amended) is amended to read:

7 "13-1-111. COMPETITIVE SEALED PROPOSALS--CONDITIONS FOR
8 USE.--

9 A. Except as provided in Subsection G of Section
10 13-1-119.1 NMSA 1978, when a state agency or a local public
11 body is procuring professional services or a design and build
12 project delivery system, or when the state purchasing agent, a
13 central purchasing office or a designee of either officer makes
14 a written determination that the use of competitive sealed
15 bidding for items of tangible personal property or services is
16 either not practicable or not advantageous to the state agency
17 or a local public body, a procurement shall be effected by
18 competitive sealed proposals.

19 B. Competitive sealed proposals may also be used
20 for contracts for construction and facility maintenance,
21 service and repairs.

22 C. Competitive qualifications-based proposals shall
23 be used for procurement of professional services of architects,
24 engineers, landscape architects, construction managers and
25 surveyors who submit proposals pursuant to Sections 13-1-120

1 through 13-1-124 NMSA 1978.

2 D. Competitive sealed proposals shall also be used
3 for contracts for the design and installation of measures the
4 primary purpose of which is to conserve natural resources,
5 including guaranteed utility savings contracts entered into
6 pursuant to the Public Facility Energy Efficiency and Water
7 Conservation Act.

8 [~~B-~~] E. The governor shall appoint an advisory
9 committee to provide assistance in development of rules for the
10 implementation of this section. The advisory committee shall
11 include one representative from the New Mexico building and
12 construction trades council, American federation of labor -
13 congress for industrial organizations, and a representative of:

14 (1) the associated general contractors - New
15 Mexico building branch;

16 (2) the New Mexico chapter of the national
17 electrical contractors association;

18 (3) the New Mexico sheet metal contractors'
19 association;

20 (4) the mechanical contractors association of
21 New Mexico;

22 (5) the New Mexico association of counties;

23 (6) the New Mexico municipal league;

24 (7) the [~~state board of education~~] public
25 education department;

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- 1 (8) the construction industries commission;
- 2 (9) the Rio Grande underground contractors
- 3 association;
- 4 (10) the American subcontractors association
- 5 of New Mexico;
- 6 (11) the higher education community; and
- 7 (12) the general public, who is not associated
- 8 with the construction industry and who will serve as chair of
- 9 the committee. "

10 Section 5. A new section of the Procurement Code is
11 enacted to read:

12 "[NEW MATERIAL] CONTRACTS FOR THE DESIGN AND INSTALLATION
13 OF MEASURES FOR THE CONSERVATION OF NATURAL RESOURCES.--A state
14 agency or a local public body may solicit competitive sealed
15 proposals for a contract that provides for both the design and
16 installation of measures the primary purpose of which is to
17 conserve natural resources, including guaranteed utility
18 savings contracts entered into pursuant to the Public Facility
19 Energy Efficiency and Water Conservation Act. "